87-1832

No.

Supreme Court, U.S.
FILED
MAY 3 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

LENDEN J. DONNELLS,

Petitioner,

vs.

WOODRIDGE POLICE PENSION BOARD, TERRY McROBERTS, BRUCE PANEK, and DONALD JANUS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND JUDICIAL DISTRICT

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QUESTION PRESENTED FOR REVIEW

Has the petitioner been deprived a property right created under the Illinois Revised Statutes, Chapter 108½, Article 3, Section 3-109 in violation of the due process clause of the Fourteenth Amendment of the United States Constitution by him being denied entry into the Woodridge, Illinois, police pension fund?

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OPINIONS BELOW

On August 28, 1987, the Illinois Appellate Court reversed the decision of the Honorable S. Bruce Scidmore, Judge of the Circuit Court of DuPage County, Illinois, wherein the Honorable S. Bruce Scidmore entered a judgment granting the petitioner entry into the Woodridge, Illinois, police pension fund. (The opinion of the Illinois Appellate Court of August 28, 1987, is reprinted herein as Appendix A.)

A petition for rehearing was filed with the Illinois Appellate Court, which petition was denied on September 29, 1987. (Denial of the petition for rehearing by the Illinois Appellate Court is reprinted herein as Appendix B.)

Subsequently thereafter, a petition for leave to appeal was filed with the Illinois Supreme Court, which petition was denied on February 3, 1988. (Denial of the petition for leave to appeal by the Illinois Supreme Court is reprinted herein as Appendix C.)

JURISDICTION

1. The federal question that the petitioner would be deprived of a property right if he were denied entry into the Woodridge, Illinois, police pension fund was raised in the administrative hearing before the Police Pension Board of Woodridge, Illinois; further, the very issue was raised in the complaint for administrative review filed in the Circuit Court of DuPage County, Illinois, and heard by the Honorable S. Bruce Scidmore; subsequently, the issue was raised in the Illinois Appellate Court, and thereafter in the Supreme Court of Illinois, via a petition for leave to appeal.

2. The petition for Writ of Certiorari was filed within ninety days after the entry of the judgment by the Illinois Supreme Court on February 3, 1988.

CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On May 1, 1968, the petitioner was appointed to the Woodridge Police Department.

At the time of his appointment, the petitioner was over 35 years of age and was ineligible to join the pension fund under the statute in effect at that time.

In 1975, the legislature changed the statute to allow police officers who had been excluded due to the age restriction to join the pension fund by applying for entry into the pension fund by July 1, 1976.

On June 10, 1976, the petitioner was seriously injured in a motorcycle accident and as a result was placed on medical leave.

Upon returning to active duty in February, 1980, the petitioner applied to join the pension fund, citing Illinois

Revised Statutes, Chapter 108½, Section 3-109, and Illinois Revised Statutes, Chapter 108½, Section 3-106.

In conjunction with the entry application of February, 1980, the petitioner relied upon Illinois Revised Statutes, Chapter 108½, Article 3, Section 3-109, Persons Excluded, the applicable portion of said statute being quoted:

> Any policeman who was excluded by reason of the age restriction removed by this amendatory Act of 1975 may elect to participate by making a written application to the Board before July 1, 1976 and establishing service credit for his past service by paying into the police pension fund before July 1, 1976 the amount he would have contributed had deductions from his salary been made for such purpose at the time such service was rendered together with interest thereon at 2% per annum from the time such service was rendered until the date the payment is made.

After administrative hearings by the Police Pension Board of the Village of Woodridge, Illinois, the Pension Board denied the petitioner's application for entry into the fund.

Subsequently, the petitioner filed a complaint for administrative review, resulting in the Circuit Court reversing the Pension Board's decision by holding that the petitioner could either join the fund on the basis of Illinois Revised Statutes, Chapter 108½, Section 3-106, relative to reappointment, or in the alternative, under Illinois Revised Statutes, Chapter 108½, Section 3-109, by tolling the statute because of the petitioner's medical leave of absence from the date of his injury on June 10, 1976, until his re-employment in February of 1980.

Thereafter, the Pension Board appealed the matter to the Appellate Court and the Appellate Court reversed the Circuit Court's findings.

For purposes of this petition for Writ of Certiorari, the petitioner shall only address Illinois Revised Statutes, Chapter 108½, Article 3, Section 3-109, and shall not contend that the petitioner qualifies for entry into the pension fund under Chapter 108½, Article 3, Section 3-106.

REASONS FOR GRANTING THE WRIT

THE APPELLATE COURT ERRED IN REVERSING THE DECISION OF THE TRIAL COURT, WHICH HAD REVERSED THE WOODRIDGE POLICE PENSION BOARD'S DENIAL OF THE PETITIONER'S ENTRY INTO THE PENSION FUND, BASED UPON THE TRIAL COURT'S LIBERAL CONSTRUCTION OF ILLINOIS REVISED STATUTES, CHAPTER 108½, ARTICLE 3, SECTION 3-109, THEREBY DEPRIVING THE PETITIONER OF A PROPERTY RIGHT IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

In its opinion, the Appellate Court herein denied the liberal construction of *Hahn v. Police Pension Fund*, 138 Ill. App. 3d 206 (1985), to this matter.

By denying the application of the liberal construction doctrine as expressed under *Hahn v. Police Pension Fund*, in this instance, to permit the petitioner entry into the Woodridge, Illinois, police pension fund, the Illinois Appellate Court decision violated the petitioner's due process right under the Fourteenth Amendment of the United States Constitution wherein *Hahn v. Police Pension Fund* holds that pension statutes should be liberally construed for purposes of affording pension benefits to police officers, such as the petitioner, herein.

Property rights are created by State law and are protected by the Fourteenth Amendment of the United States Constitution against the violations of such property rights. *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Begg v. Moffitt*, 555 F. Supp. 1344 (1983).

In this instance, a property right has been created under Illinois Revised Statutes, Chapter 108½, Article 3, Section 3-109, for entry into the pension fund by Illinois police officers; the *Hahn v. Police Pension Fund* decision requires liberal construction doctrine be applied to pension statutes so that police officers may be recipients of the pension benefits as provided by the pension statutes.

For purposes of analysis of the *Hahn v. Police Pension Fund* decision, it should be noted that Hahn had resigned from the police department of Woodstock, Illinois, before he obtained a 50% disability pension; in that matter, the court disregarded the position of the pension board that, since the relationship between employer and employee had been severed, there was no legal basis for issuing a pension, because under the Illinois Pension Code, Chapter 108½, Sections 3-115 and 3-116, police officers receiving disability pensions are considered to be members of the police force in that they can be recalled to duty in an emergency situation.

Although Hahn could not have fulfilled the statutory requirement of responding to an emergency situation because of his severance from employment, nevertheless, the *Hahn* court held that that was insignificant and immaterial, since Hahn had preserved his right to pursue his pension in his letter of resignation from the Woodstock, Illinois, police department.

In addition to *Hahn*, in *Jahn v. City of Woodstock*, 99 Ill. App. 3d 206 (2nd Dist. 1981), and in *Board of Trustees v. Department of Insurance*, 42 Ill. App. 3d 155, 356 N.E. 2d 171 (1976), the Appellate Court has held that the purpose of pension laws for police officers' pensions is to benefit them and that such statutes are to be liberally construed in favor of the police officers so as to benefit them. *Peifer v. Board of Trustees of Police Pension Fund of Winnetka*, 57 Ill. App. 3d 102, 372 N.E.2d 1106, 1109 (1978).

As a consequence, the Appellate Court's reliance upon *Giuliano v. Board of Trustees*, 89 Ill. App. 2d 126 (1967), at 128, for the proposition that the court had no right to modify the legislative language of the statute cannot be reconciled with the Appellate Court's position in *Hahn* which expanded or modified the language of the emergency requirement by permitting Hahn to secure a pension, although he could not fulfill that particular aspect of the statute which would have required him to return to an emergency work situation; the statute, in this instance, was justifiably expanded or modified by the Honorable S. Bruce Scidmore, when he stated, at C474, as follows:

> "Well, it is not an ambiguity, Counsel, but the statute does not address this situation either.
>
> "Does the statute say anything about someone who is on medical leave at the time the right accrues to them to go onto the board, as to whether he's on—no matter what his status at that time might be?"

As the Circuit Court noted at C481, the critical date of July 1, 1976, was significant in that, prior to that date, and on that date, and thereafter until February 1980, the petitioner was on a medical leave of absence, with the result that the court determined that it would liberally construe the statute relative to the facts herein, which

facts the Circuit Court contended the statute did not envision, in order to bestow the pension benefit upon the petitioner.

Therefore, pursuant to *Adams v. Foxworthy*, 71 Ill. 2d 13, 373 N.E.2d 1332 (1978), the court held that a proper interpretation of a statutory provision cannot simply be based upon language, but it must be grounded on the nature, objects, and consequences, which supports the pension liberal construction theory as expressed in *Hahn.*

As a result, is the liberal statutory interpretation in *Hahn* to be applied differently to the petitioner when medically he was unable to enter the pension fund by July 1, 1976? It seems strange indeed that a resigned employee was able to secure a pension, while an employee on medical leave of absence, who can be characterized as neither resigned nor terminated, does not have that same opportunity of entry into the pension fund.

Likewise, to support its decision, the Appellate Court relies upon *Young v. Board of Trustees*, 57 Ill. App. 3d 689 (1978), at 695-96, for the legal proposition that there are two requirements necessary for participation in the fund; namely, filing a written application to the board, and making necessary contributions prior to July 1, 1976.

From the standpoint of filing a written application prior to July 1, 1976, in the transcript of proceedings of July 12, 1983, at page 165, Thomas Clisham, a former member of the Woodridge Police Pension Board, testified that: "Whether he (Donnells) filed a formal written application, I don't know. I don't know if one was ever provided to him."

Based upon that testimony, there is no question that the pension board had to provide an application to him.

Consequently, the testimony of the petitioner indicates that he had to have been supplied a pension application, when he states that he had to supply additional information; namely, a birth certificate, a marriage certificate, and discharge papers; the testimony correlates with the testimony of Janice Zawodniak, who testified at pages 24-25 of the transcript of proceedings of October 22, 1984, that a birth certificate and a marriage certificate were required, and that those documents would necessarily be submitted in connection with an application; further, she testified that she had a document dated February 2, 1976, requesting such information pertaining to a birth certificate and a marriage certificate, which coincides with the testimony of the petitioner that he furnished such documents on February 8, 1976.

Further proof that those documents had to be furnished, and, specifically, the written application, is that Janice Zawodniak would have required those documents to calculate the amount of funds that would be required to be paid prior to June 30, 1976, since a pension application requires the date of entry onto the police department, marital status, and amount of salary received, which information could not have been secured in the absence of such a written application.

As a consequence, it is the contention that the petitioner did furnish that documentation, which the Appellate Court considers so vital on the basis of the *Young* decision.

At the same time, from the viewpoint of contributions prior to June 30, 1976, at page 10 of its opinion, the court states that as a practical matter, the petitioner would not have been able to afford the contributions pursuant to his testimony.

However, it is noted herein that on June 30, 1976, the petitioner stated in writing that "I regret that due to circumstances beyond my control, I will be unable to participate in the Woodridge Police Pension Fund." The above statement was uttered by the petitioner on the basis that he was confined in the hospital and could not leave the hospital for purposes of securing any financing.

Although he did testify that he did not have adequate assets on hand to contribute the amount necessary prior to July 1, 1976, nevertheless he did have real estate which he could have utilized for purposes of financing the necessary funds to contribute. Transcript of proceedings of July 12, 1983, pages 200-201.

It should also be noted that, at page 201 of that transcript of proceedings, after being released from the hospital, petitioner was confined for at least 30 days to his home pursuant to doctor's orders to that effect.

Because of the above circumstances, the petitioner contends that he has been denied a property right under the Fourteenth Amendment of the United States Constitution by having the Appellate Court not apply liberal construction to the Illinois statute in question for the benefit of the petitioner to qualify for the fund, since the statute should be tolled so as to provide the same opportunity for entry into the pension fund as the Appellate Court had done in *Hahn* by enabling a resigned police officer to receive disability funds through a liberal construction of the pension statute; the same accord should be afforded to a disabled police officer who is still an employee in good standing.

CONCLUSION

For reasons enumerated herein, the Writ should be granted.

Respectfully submitted,

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APPENDIX A

IN THE
APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
No. 2-87-0014—Filed August 28, 1987

LENDEN J. DONNELLS,

Plaintiff-Appellee,

v.

WOODRIDGE POLICE PENSION BOARD, TERRY McROBERTS, BRUCE PANEK, and DONALD JANUS,

Defendants-Appellants.

Appeal from the Circuit Court of DuPage County.
No. 85 MR 0187
Honorable **S. Bruce Scidmore,** Judge Presiding.

JUSTICE DUNN delivered the opinion of the court:

Defendants, the Woodridge Police Pension Board and its members (board), appeal from an order of the circuit court of DuPage County, which on administrative review, reversed the decision of the board. The trial court determined that plaintiff, Lenden Donnells, was eligible to participate in the pension system. The board contends that the court improperly relied on a liberal construction of sections 3-106 and 3-109 of the Illinois Pension Code (Code) (Ill. Rev. Stat. 1985, ch. 108½, pars. 3-106 and 3-109) and

that the trial court's decision to reverse the board's decision was against the manifest weight of the evidence.

Donnells joined the Woodridge police force on May 1, 1968. Under the existing law at that time, Donnells was ineligible to participate in the pension fund because he was over 35 years old. In consideration for obtaining his position with the force, Donnells executed a waiver of any rights he may have had to receive a pension, but the village of Woodridge purchased an annuity policy for his benefit.

In 1976, Donnells received a letter informing him of his eligibility to participate in the pension fund provided he apply and pay back contributions in the amount of $8,088.81 prior to July 1, 1976. At the hearing before the board, Donnells claimed that the board informed him of this opportunity while he was still hospitalized due to a motorcycle accident. The board had not afforded him adequate notice to raise the money. The board concluded from the testimony at the hearings that plaintiff had been warned on at least two occasions prior to the deadline and that Donnells had executed a letter indicating that he did not wish to participate in the pension system.

Donnells remained on a medical leave of absence from June 10, 1976, the date of his accident, until February 4, 1980. In the interim, Donnells requested to return to work on "inside duty." The director denied his request in a letter dated June 28, 1977, suggesting that plaintiff "please continue to seek medical assistance and when you are totally able to perform all duties your reinstatement will be considered." In December 1977, Donnells received a letter indicating that he had become eligible for a police pension provided he could pass the physical and bring his contributions up-to-date by July 1, 1978. No response is

included in the record. However, the record reveals that Donnells received notice of a physical examination scheduled for March 2, 1979, to which he replied that he would be unable to pass the examination due to his disability.

Donnells returned to work in February 1980. On March 20, 1980, plaintiff applied to the board for acceptance to participate in the pension fund. The board denied plaintiff admission on the basis of an opinion letter by the Illinois Department of Insurance which indicated that plaintiff was ineligible because he missed the application deadline of July 1, 1976. The board conducted hearings on the issue of plaintiff's eligibility.

Donnells filed an addendum to his application while the hearings were still in progress. The addendum alleged that plaintiff was entitled to entry into the pension fund as he applied within 90 days from his reinstatement in compliance with section 3-106 of the Code (Ill. Rev. Stat. 1985, ch. 108½, par. 3-106). During this time, he received longevity pay. The amount was based in part on the time plaintiff was on a medical leave of absence. The board's findings of fact include:

"1. LENDEN J. DONNELLS was ineligible to become a member of the Pension Fund when he was hired in 1968 because he was older than 35 years old.

2. That he executed a Waiver of Pension Fund Rights in consideration of his being hired as a police officer and that the Village of Woodridge purchased an annuity for his benefit.

3. That in 1975, a change in the Illinois Revised Statutes, Public Acts 79-1165, allowed Mr. Donnells to enter the Fund if he paid the required amount prior to July 1, 1976.

4. That he failed to do so, after notice on at least two occasions of the amount needed.

5. That he signed a written declaration that he could not enter the Fund in 1976.
6. That Mr. Donnells was not eligible to enter the Fund by virtue of Illinois Revised Statutes, Public Act 80-1051, which applied to new officers between 1976 and 1978.
7. That Mr. Donnells failed to apply at that time.
8. That Mr. Donnells filed an application in 1980 based upon Illinois Revised Statutes, Ch. 108½, Section 3-106, that a police officer had the right to refile for the Pension within three months of his "reappointment" to the police force.
9. That Mr. Donnells was never reappointed but was reinstated to an active status, after being on medical leave. He was always a sworn officer who was shown on the police roster that he was on sick leave."

Plaintiff thereafter filed a complaint in the circuit court of DuPage County for administrative review of the board's decision which denied him entry into the pension fund. The complaint alleged that the board never contacted plaintiff regarding his opportunity to enter the pension system on or before July 1, 1978, and that he was given inadequate time to raise the money required to enter the fund in 1976. The court determined that the board's decision was not against the manifest weight of the evidence; however, the court concluded that the board improperly applied the law to the facts. The court determined that the Code should be given liberal construction so that plaintiff would be considered reappointed under section 3-106 or that the deadline of July 1, 1976, be tolled due to the presence of plaintiff's medical illness until returning to work. The trial judge explained:

> "My decision, in no way on this case, was based on the manifest weight of the evidence. That's a fac-

> tor that I didn't consider, because it seemed to me that there was no dispute between the parties concerning what the facts were.
>
> The question was the legal effect of those facts. And in that respect, the decision of the Court is based upon—as I said previously, what I believe to be the—the correct approach.
>
> And, admittedly, I think I have said before on the record that this was a liberal construction of the statute."

The trial court ruled in Donnells' favor and denied the board's motion for reconsideration. The board filed a timely notice of appeal.

We note in passing that the plaintiff did not argue at the administrative level that his medical condition should have tolled the deadline for application. Rather, this argument was advanced by the trial judge. An administrative agency ought to have the opportunity to rule on the issues in the first instance. (*Smith v. Illinois Department of Public Aid* (1986), 150 Ill. App. 3d 584, 588-89, 502 N.E.2d 42.) However, we will address this issue as it constitutes a legal question involving statutory construction.

The Administrative Review Act (Ill. Rev. Stat. 1985, ch. 110, par. 3-110) empowers a trial court to review any final administrative decision and to consider all questions of law and of fact presented by the entire record before the court. The decision of the administrative agency will be reversed either where it is legally erroneous or is factually against the manifest weight of the evidence. (*Pepsi-Cola General Bottlers, Inc. v. Illinois Human Rights Com.* (1985), 137 Ill. App. 3d 288, 292, 484 N.E.2d 538.) The court is not bound to accord the same measure of deference to an administrative agency's construction of a statute as would be given to an agency's finding of fact.

Nestle Co. v. Johnson (1979), 68 Ill. App. 3d 17, 20, 385 N.E.2d 793.

Initially, we will address plaintiff's second contention that the trial court's decision was against the manifest weight of the evidence. Upon administrative review, the trial court and the appellate court are limited to ascertaining whether the findings and the orders of the administrative body were contrary to the manifest weight of the evidence and to whether the administrative body acted arbitrarily in clear abuse of its discretion. (*Easter Enterprises, Inc. v. Illinois Liquor Control Com.* (1983), 114 Ill. App. 3d 855, 857, 449 N.E.2d 1013.) We are limited, therefore, to ascertaining whether the board's decision was contrary to the manifest weight of the evidence and not, as the plaintiff suggests, whether the trial court's decision was against the manifest weight of the evidence. In the instant case, the trial court found that the board's decision was not factually against the manifest weight of the evidence. Therefore, the only issue remaining is whether the trial court erred in construing the Code liberally, which constitutes a legal question.

It is well settled that rules governing police and firemen's pensions are to be liberally construed in favor of those to be benefited. (*Hahn v. Police Pension Fund* (1985), 138 Ill. App. 3d 206, 211, 485 N.E.2d 871.) The trial court determined that under a liberal interpretation of sections 3-106 and 3-109 of the Code, plaintiff was eligible to participate in the pension fund. The applicable amendment of section 3-109 provided in relevant part:

> "Any policeman who was excluded by reason of the age restriction removed by this amendatory Act of 1975 may elect to participate by making a written application to the Board before July 1, 1976 and establishing service credit for his past service by pay-

> ing into the police pension fund before July 1, 1976 the amount he would have contributed had deductions from his salary been made for such purpose at the time such service was rendered, together with interest thereon at 2% per annum from the time such service was rendered until the date the payment is made." (Ill. Rev. Stat., 1976 Supp., ch. 108½, par. 3-109, as amended by Pub. Act 79-1165, effective December 18, 1975.)

Section 3-106 provides in pertinent part:

> "Police officer, officer. 'Police officer', or 'officer': Any person who (1) is appointed to the police force of a police department and sworn and commissioned to perform police duties; (2) is found upon examination of a duly licensed physician or physicians selected by the board to be physically and mentally fit to perform the duties of a police officer; and (3) within 3 months after receiving his or her first appointment, and if reappointed, within 3 months thereafter, makes written application to the board to come under the provisions of this Article." (Ill. Rev. Stat. 1985, ch. 108½, par. 3-106.)

Specifically, the trial court found that plaintiff had been reappointed to the force in February 1980 under section 3-106 and had made a timely application for benefits, and the deadline for the original application, July 1, 1976, was tolled due to plaintiff's medical incapacity.

In our opinion, the trial court erroneously reversed the board's decision to deny entry into the pension fund based on an incorrect interpretation of the statute. While the courts have favored a liberal construction of the statute which would allow benefits, the trial court's construction of the statute extends the benefits beyond the legislature's intent. Section 3-109 never authorized the tolling of the deadline of application due to sickness or incapacity. The legislature had full power to direct the distribution of the

pension fund and did not exempt individuals from applying and making contributions. The court has no right to modify the legislative language. *Giuliano v. Board of Trustees* (1967), 89 Ill. App. 2d 126, 128, 231 N.E.2d 257.

The legislature's apparent intent was to allow eligibility to previously excluded police officers provided they complete a written application to the board and make the necessary contributions prior to July 1, 1976. In *Young v. Board of Trustees* (1978), 57 Ill. App. 3d 689, 695-96, 373 N.E.2d 709, the board appealed the trial court's reversal of its decision that plaintiff was ineligible to participate in its pension fund. Plaintiff had originally been excluded from participating by virtue of her age at the time she was appointed a patrolwoman. By 1975, however, a curative and remedial provision of the amended section 3-109 provided plaintiff with the opportunity to become eligible to participate in the pension fund. Although plaintiff had made the requisite contributions to the fund and had numerous communications with the board, the record was devoid of a written application. The court held that her actions did not constitute the necessary written application which the legislature obviously envisioned. Nothing in the record indicated to the court that plaintiff had complied with the key requirement. The court remanded the cause for the purpose of allowing plaintiff the opportunity to demonstrate that she made a written application to the board before July 1976, and for the board to determine whether the necessary contributions together with interest at 2% had been made.

While *Young* did not involve a claim that a police officer was unable to comply with the requirements due to illness, the case is instructive. The court's holding indicates that the plaintiff must demonstrate that the requirements of a written application and contributions were

met before the deadline in order to qualify for pension benefits. The court was not willing to accept plaintiff's actions in lieu of the application. Likewise, plaintiff's failure in this case to comply with the statute precludes his admission into the fund. Additionally, as a practical matter, the record indicates that despite plaintiff's medical condition, he was not precluded from filing a written application because he was able to file a written refusal to participate in the fund, and, similarly, defendant testified before the board that he was unable to afford the contributions.

Further, in our view, the trial court erroneously reversed the board's decision that plaintiff could not apply in March 1980 as a "reappointed" policeman. In determining a legislature's intent, the statute must be read as a whole and all relevant parts considered. (*People v. Jordan* (1984), 103 Ill. 2d 192, 206, 469 N.E.2d 569.) Under section 3-106 of the Code (Ill. Rev. Stat. 1985, ch. 108½, par. 3-106), plaintiff, if reappointed, could apply to the board within three months of his reappointment. Reappointment, however, does not encompass returning from a medical leave of absence. Reappointment is synonomous with being rehired. The present section 3-109 indicates that a "police officer who is reappointed shall, before being declared eligible to participate in the pension fund, repay to the fund as required by Section 3-124 any refund received thereunder." (Ill. Rev. Stat. 1985, ch. 108½, par. 3-109.) Section 3-124 allows refunds for those who "separate" from police service with less than 20 years of service and for those who die with less than 10 years of police service. (Ill. Rev. Stat. 1985, ch. 108½, par. 3-124.) The record indicates, as the board found, that plaintiff was on a medical leave of absence but not separated from the force. In fact, plaintiff received longevity pay

with credit for the years he spent on medical leave. Therefore, no reasonable construction of the Code renders plaintiff eligible to participate in the pension fund.

Accordingly, the trial court's decision is reversed.

Reversed.

HOPF and INGLIS, JJ., concur.

[Certificate of Clerk omitted in printing.]

APPENDIX B

(Letterhead of)

State of Illinois
Appellate Court Second District
Elgin
60120

Appeal from the Circuit Court of DuPage County

Trial Court Number: 85MR0187

THE COURT HAS THIS DAY, 09/29/87, ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No.: 2-87-0014

Donnells, Lenden J. v. Woodridge Police Pension Bd

Petition for Rehearing filed by Plaintiff-Appellee is denied. (Dunn, Hopf, Inglis, JJJ.)

LOREN J. STROTZ, Clerk

cc: Peter A. Loutos
Stanley H. Jakala

APPENDIX C

(Letterhead of)

Illinois Supreme Court
Juleann Hornyak, Clerk
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

February 3, 1988

Mr. Stanley Jakala
Attorney at Law
3219 So. Maple
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No. 66103— Lenden J. Donnells, petitioner, v. Woodridge Police Pension Board, et al., respondents. Leave to appeal, Appellate Court, Second District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on February 25, 1988.